APPENDIX A

United States v. Pratchard, 61 M.J. 279 (C.A.A.F. 2005).

UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES
DAILY JOURNAL
No. 05-173
Wednesday, June 15, 2005

APPEALS - SUMMARY DISPOSITIONS

No. 04-0707/MC. U.S. v. Joshua J. PRATCHARD. CCA 200301258. On further consideration of the granted issues, 60 M.J. 465 (C.A.A.F. 2005), and in view of our holding in United States v. Mizgala, 61 M.J. 122 (C.A.A.F. 2005), we conclude that the United States Navy-Marine Corps Court of Criminal Appeals erred in finding that Appellant's guilty pleas waived the speedy trial issue under Article 10, Uniform Code of Military Justice, 10 U.S.C. § 810 (2000). However, upon a de novo review of the issue, we conclude, as did the court below, that the Appellant was not denied his Article 10 right to a speedy trial.

Accordingly, the decision of the United States Navy-Marine Corps Court of Criminal Appeals is affirmed.

CRAWFORD, Judge (dissenting in part and concurring in the result): I concur in the result only. See my separate opinion in United States v. Mizgala, 61 M.J. 122, 130-31 (C.A.A.F. 2005).

APPENDIX B

***United States v. Pratchard*, No. 200301258, slip op. (N-M. Ct. Crim. App. May 18, 2004)**

IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.

BEFORE

Charles Wm. DORMAN **C.J. VILLEMEZ** **R.C. HARRIS**

UNITED STATES

v.

Joshua J. PRATCHARD
Lance Corporal (E-3), U.S. Marine Corps

NMCCA 200301258 Decided 18 May 2004

Sentence adjudged 9 April 2002. Military Judge: R.C. Harris. Review pursuant to Article 66(c), UCMJ, of General – Court-Martial convened by Commanding General, 3d Marine Aircraft Wing, MarForPac, MCAS Miramar, San Diego, CA.

Capt ROLANDO SANCHEZ, USMC, Appellate Defense Counsel
Capt GLEN HINES, USMC, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

The appellant stands convicted of the wrongful use of methylenedioxymethamphetamine (ecstasy) and three specifications of the wrongful distribution of ecstasy, in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. The military judge, sitting as a general court-martial, sentenced the appellant to confinement for 3 years, forfeiture of all pay and allowances, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved the sentence and, in accordance with the terms of the pretrial agreement, ordered that confinement in excess of 30 months be suspended for a period of 6 months from the date the sentence was adjudged.

We have examined the record of trial, the appellant's two assignments of error, as well as the Government's response. We conclude that the findings and the sentence are correct in law and fact and, except as noted below, that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

In his first assignment of error, the appellant asserts that he was denied a speedy trial under Article 10, UCMJ. In his second assignment of error he seeks relief based on his assertion that the CA failed to list companion cases in his action. The Government argues waiver with respect to the first issue, and argues that the appellant has not demonstrated any prejudice with respect to the second.

Speedy Trial

Concerning the first assignment of error, we conclude that the appellant's unconditional guilty plea has in fact waived the issue he now seeks to raise. *United States v. Bruci*, 52 M.J. 750, 754 (N.M.Ct.Crim.App. 2000). We also find an affirmative waiver by the appellant concerning this issue contained in the record of trial. Record at 144.

Even if we did not conclude that the appellant's unconditional guilty pleas had waived consideration of the appellant's motion to dismiss under Article 10, UCMJ, we would not grant the relief requested. We review a military judge's denial of such a motion *de novo*. *United States v. Cooper*, 58 M.J. 54, 57 (C.A.A.F. 2003). Applying this standard of review, we agree with the military judge that the appellant was not denied his right to a speedy trial.

Once an accused is placed in pretrial confinement, immediate measures must be taken to notify him of the charges against him and either bring him to trial or dismiss the charges. Art. 10, UCMJ. Although the Government is required to exercise reasonable diligence in bringing an accused to trial, proof of constant motion is unnecessary. *United States v. Kossman*, 38 M.J. 258, 262 (C.M.A. 1993). On appellate review, we afford the factual findings of the military judge substantial deference, *see United States v. Doty*, 51 M.J. 464, 465 (C.A.A.F. 1999), and are required to consider: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion of the right to speedy trial; and (4) the existence of prejudice. We should also consider such factors as: (1) did the appellant enter pleas of guilty, and if so, was it pursuant to a pretrial agreement; (2) was credit awarded for pretrial confinement on the sentence; (3) was the Government guilty of bad faith in creating the delay; and (4) did the

appellant suffer any prejudice to the preparation of his case as a result of the delay. *See United States v. Birge*, 52 M.J. 209, 212 (C.A.A.F. 1999). Applying the above standards to the case at bar, we conclude that the appellant's Article 10, UCMJ, rights were not violated and that the military judge did not err in denying the appellant's motion to dismiss.

Companion Cases?

With respect to the appellant's second assignment of error, we concur with the Government that the appellant has failed to demonstrate any prejudice by the absence of any companion cases being listed in the CA's action. In his assignment of error, the appellant seeks either disapproval of the punitive discharge or a new CA's action, because the CA did not list the companion cases of Lance Corporals (LCpls) Polewski, Thompson, and Oakes.[1] Appellant's Brief of 24 Nov 2003 at 13. Based on our review of the record and the appellate pleadings, we are not able to determine whether these are in fact companion cases. The requirement to list companion cases applies only where the cases have been referred to trial by the same CA, and it is the appellant who has the burden of demonstrating the existence of companion cases. *United States v. Ortiz*, 52 M.J. 739, 741 (N.M.Ct.Crim.App. 2000).

The appellant seeks to rely upon The Manual of the Judge Advocate General (JAGMAN), Judge Advocate General Instruction 5800.7C, § 0151a(2)(Ch-3, 27 Jul 1998), that requires CA's to list companion cases when acting on courts-martial. Specifically this provision provides that, "[i]n court-martial cases where the separate trial of a companion case is

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[1] Although the appellant indicates that Thompson and Oakes are Privates, they are listed in the appellant's charge sheet as Lance Corporals.

ordered, the convening authority shall so indicate in his action on the record in each case." The purpose of this provision is "to ensure that the convening authority makes an informed decision when taking action on an accused's court-martial." *Ortiz*, 52 M.J. at 741.

We decline to grant relief for the following reasons. First, this JAGMAN guidance to convening authorities creates no right that is enforceable on appeal. *United States v. Swan*, 43 M.J. 788, 792 (N.M.Ct.Crim.App. 1995). Second, we are confident that the CA made an "informed decision" in taking his action in this case, because he considered the record of trial, which specifically describes the involvement of LCpls Polewski, Thompson, and Oakes in the appellant's criminal conduct. Wing General Court Martial Order 11-02 of 3 Dec 2002 at 5. Third, the appellant has failed to show how he has been prejudiced in this case. *United States v. Watkins*, 35 M.J. 709, 716 (N.M.C.M.R. 1992); *see also Swan*, 43 M.J. at 792 (noting that even if error had occurred, the appellant failed to make "a colorable claim of prejudice resulting from such an omission," and was entitled to no relief). Finally, the appellant has failed to demonstrate that LCpls Polewski, Thompson, and Oakes were tried by a court-martial convened by the Commanding General of the 3d Marine Aircraft Wing.[2]

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[2] In fact, the appellant introduced the pretrial statement of both Oakes and Polewski. Defense Exhibits A and B. In reviewing Defense Exhibit B, we note that Polewski is a military policeman, assigned to the Provost Marshal's Office, MCAS, Miramar. As such, it is doubtful that the Commanding General, 3d Marine Aircraft Wing, would have referred his case to trial.

Conclusion

Accordingly, the findings and sentence, as approved by the CA, are affirmed.

For the
Court

R.H.
TROIDL
Clerk of
Court

Judge HARRIS did not participate in the decision of this case.